

**LAKE COUNTY BOARD of ADJUSTMENT**  
**July 13, 2016**  
**Lake County Courthouse Commissioners Office (Rm 211)**

**Meeting Minutes**

**MEMBERS PRESENT:** Sue Laverty, Steve Rosso, Don Patterson, Frank Mutch, Merle Parise

**STAFF PRESENT:** Jacob Feistner, Rob Edington, Joel Nelson, Wally Congdon

Sue Laverty called the meeting to order at 4:00 pm. Minutes were deferred per agenda. Jacob introduced new planner Rob Edington and contract planner Joel Nelson.

**RAYKOWSKI CONDITIONAL USE—EAST SHORE (4:01 pm)**

Jacob Feistner introduced Johna Morrison of Carstens & Associates, the agent representing Keith Raykowski. Jacob presented the staff report. (See attachments to minutes in the July 2016 meeting file for staff report.)

Sue asked about the red and gold shown on attachment 3. Johna explained that for the existing house, the gold was the deck and the red was the house. Jacob said the detached garage was located where ‘parking’ was written. Johna clarified that it was actually on the applicants’ other lot except for a corner. They’d have to do a boundary line adjustment to fix that if they were to sell the other lot at some point. It was approximately 2 feet across the boundary and was not included in the drawing. Merle asked if the existing shed would be removed. Johna said the shed in the right of way would stay.

Johna Morrison of Carstens & Associates spoke about the application. The applicants wanted to remove the old structure and replace it in another spot. The current spot was too close to the highway right of way. The other buildable area had no access up above so wasn’t considered. They were working with the County currently on where to put the septic. A portion would probably be in the location of the existing house, which was mildly sloped and had a lot of room. Sue and Johna talked about the setback from the road. Johna emphasized that it was the greater of 50 feet from the right of way or 100 feet from the center line. She showed where that setback line would be. Steve confirmed with Johna that a septic field could be put in the setback.

Jacob described where the road would be on attachment 3B. Steve checked with him that the dark line going through the property on attachment 1 was Hwy 35.

Johna told Steve that the engineering requirement was absolutely acceptable. She thought they’d want to have an engineer look at that. The group touched on a situation with a house a few doors south. Jacob and Joel described the house that was sliding there. A big plume of soil had gone into the lake and created a big cloud of turbidity.

You could see movement [of the house] over a period of days so it was going quickly. The owner took care of it by allowing the fire dept. to do a practice burn. Steve noted the first clue to risk of landslides and so forth was to look around for others in the immediate area on the same exposure and on the same kinds of slopes. Returning to the subject property, Johna described trees with bends that could indicate slope issue. A part was excavated out that may have stopped the trees from doing that. The load may have been the ground itself. An engineer would definitely look at this.

Steve and Johna discussed the shed that was actually in the right of way. Johna said it looked like it had been there since the late 1960's. She didn't think the highway dept. could make them move it at this point. If it was removed, it couldn't be put back. Steve thought it looked like it was a little over the property line. Johna thought it might be, by a tiny amount.

Sue confirmed with Johna that the private drive, shown on 5B, was a grassy, gravel type of dirt road. Johna added it had a really nice grade once you got off the highway.

*Public comment opened:*

Don Creveling owned the property to the south of the subject property. He asked if the purpose of this process was to describe what would happen when the grade was changed by more than 25%. Jacob replied it was disturbance of existing grade over 25%. Don C confirmed with Jacob that subsequent plans for sewer or water were a separate process. He asked about effects on setbacks and if distance between water source, septic and so forth crossed property boundaries. A couple of people confirmed. Johna confirmed that water or a well next to a property line would affect the adjacent property. Within 100 feet of that property boundary, it could affect it. Luckily, this property's water source was the lake so it took out that separation from the well. Don C said because a lot of these properties were above the highway, there were lots of wells and water sources north of the road. He asked about wells above the road. Johna said this was rare because of the expense of boring under the road. Don C thought if there was a real foundation for the sliding house, it was gone.

*Public comment closed.*

Merle referred to copies of a lawsuit. Was that closed or open? Jacob didn't believe that had been settled yet. He wasn't reviewing that portion. Johna also thought it was ongoing. The letter from the neighbors' attorney said there was a prescriptive easement. Why couldn't they remove a house and put a house in and still be prescriptive? She thought the lawsuit would be ongoing because there was another lot there that was empty. It would probably be built on someday. That issue needed to be resolved before yet another house was built. Frank pointed that was beyond the scope of this meeting. Don P said the comments in both of those [letters] assumed there would be 2 houses. One would be taken down. Sue thought they wanted to be assured of that. Her concern was that removing an existing house and excavating and building a new house put a lot of wear and tear on the common area. She could see the concerns of the adjoining neighbors. She thought it might be beyond the Board to assure the adjoining neighbors

that their road would be restored if damaged. Johna said the Raykowskis had to get the easement figured out. The house might not be built if they didn't get the access straightened out. Sue checked that it would be stretching things to try to put something in the conditions. Jacob agreed that might be stretching it. It was discussed in the findings that they were to be sure their construction activities did not impact access. As far as enforcing that, he would have to look into that more. Don P said that wasn't part of the condition they were asking for. Johna said another factor was the neighbors. For most of them, these were recreational properties. One house to the north appeared to have a year-round resident. .

Sue described her concern that through the course of construction, damage or increases to the easement or to the access got corrected. The construction equipment could tear up roads, especially dirt. Then they were gone and the community was left with fixing the access. Merle thought the heaviest equipment would be the concrete truck. How many yards of concrete would it take to finish? Those tires and ruts could damage the access. Jacob said the staff recommendation for approval was based on them insuring they weren't going to impact that access. Sue said that would cover her concern.

Steve said no condition required them to show there would be established access in the future for the property owners and emergency vehicles. Johna said one condition of approval was for her to seek out the Finley Point Fire Dept. and have them comment prior to the issuance of the zoning conformance. Steve asked if people had to show access to the property prior to the issuance of a zoning conformance permit for construction. Jacob replied that staff didn't generally ensure access. That was more of a subdivision requirement or legal issue. They would make sure a house wasn't built over somebody else's easement. Steve thought the owners would want to solve this problem before they started to pound nails. Jacob thought they needed to have discussion with the neighbors. The fire dept. might want some of the brush cleared along the road, which would require some communication too. Sue thought that would be beneficial to all the properties.

Steve remarked this wasn't the first time the Board confronted a private road crossing several properties. The reality was those neighbors needed to get together and write an agreement to cover maintenance and so forth, and sign it and agree to it. The Board didn't have control over that step but it needed to be done.

*On pg. 11, item 7, Frank suggested adding 'qualified' before 'technical' in the last sentence of the first paragraph.* Johna said it would definitely be a geotechnical engineer.

**Motion made by Steve Rosso, and seconded by Don Patterson, to accept the staff report and findings of fact with the change of adding 'qualified' as mentioned above, and approve the conditional use. Motion carried, all in favor.**

## **BIRCH CREEK PROPERTIES CONDITIONAL USE—UPPER WEST SHORE**

**(4:35 pm)**

Steve Rosso recued himself from this item as the applicants were very close friends. Joel Nelson presented the staff report. (See attachments to minutes in the July 2016 meeting file for staff report.) He gave a correction in the first paragraph of pg. 10, where 120 feet was corrected to 160 feet. He received a storm drainage addendum for the project after the staff report was done. It said that along the east side of the access road to the storage units, a 3-foot wide, 8-inch deep trench with a 2-inch minus wash drain rock will be installed to prevent potential storm runoff from draining into the adjacent property. He could work with the applicants to address the remaining questions, since the addendum didn't quite meet what was wanted for the requirements.

Sue asked about the blue building and white circle on attachment 2. Joel replied it showed the existing storage buildings. To the south of that, he thought this was a horse corral and barn. Sue asked where the access to the new storage units would be. Joel pointed to the drawn lines that turned. Sue noted these were by the yellow line, which Joel identified as the approximate property line.

Julie Fisher, the applicant, said she'd had to turn people away. She was 99% full with her storage units. The people she turned away lived in Rollins and had to go to Kalispell for storage.

*Public comment opened: None offered. Public comment closed.*

**Motion made by Sue Laverty, and seconded by Don Patterson, to approve the conditional use with the correction on pg. 10, findings of fact, staff report and conditions. Motion carried, four in favor (Sue Laverty, Don Patterson, Frank Mutch, Merle Parise).**

## **OTHER BUSINESS (4:50 pm)**

Rob Edington described some of his background at the Board's request.

**Sue Laverty, chair, adjourned the meeting at 4:53 pm.**